

UNITED STATES of AMERICA
U.S. DISTRICT COURT -- EASTERN DISTRICT OF MICHIGAN

SHERRY STAIR,

Plaintiff,

DEMAND FOR JURY TRIAL

-vs-

Case No. 11-14645
Hon. Mark A Goldsmith

DORSEY THORNTON & ASSOCIATES LLC,

Defendant.

**MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST
DORSEY THORNTON & ASSOCIATES LLC**

The Plaintiff moves for entry of a default judgment against Dorsey Thornton & Associates LLC as set forth more fully in the accompanying brief. ACCORDINGLY, Plaintiff requests that the Court enter Default Judgment against Dorsey Thornton & Associates LLC for Fraud, Cheating and Misrepresentation in the amount of \$11,000.00.

Respectfully Submitted,

ADAM G. TAUB & ASSOCIATES
CONSUMER LAW GROUP, PLC

By: s/ Adam G. Taub
Adam G. Taub (P48703)
Attorney for Sherry Stair
17200 West 10 Mile Rd. Suite 200
Southfield, MI 48075
Phone: (248) 746-3790
Email: adamgtaub@clgplc.net

Dated: March 7, 2012

UNITED STATES of AMERICA
U.S. DISTRICT COURT -- EASTERN DISTRICT OF MICHIGAN

SHERRY STAIR ,

Plaintiff,

DEMAND FOR JURY TRIAL

-vs-

Case No. 11-14645
Hon. Mark A Goldsmith

DORSEY THORNTON & ASSOCIATES LLC,

Defendant.

**BRIEF IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST
DORSEY THORNTON & ASSOCIATES LLC**

Facts and Procedural History

The Complaint was filed on October 21, 2011, and the summons and complaint were served upon the Defendant, through its resident agent who acknowledged service. The Defendant's resident agent received service of the Summons and Complaint on Friday, December 2, 2011.

The Complaint centers around three telephone calls made by the Defendant to the Plaintiff. In the first phone message, the Defendant stated, "This recording is to serve notification that you're currently being investigated for check fraud by the Criminal Investigations Division of DTA. To speak with an agent, please press 1. If you are receiving this recording on a voicemail, you have 24 hours for you and/or your attorney to return this call at (404)935-9487 or (404)935-9490."

In the second phone message, the Defendant stated, "'Hello. This message is intended for

a Sherry Stair. This is the Check Fraud Investigations Department at Dorsey, Thornton & Associates calling to serve notification that there has been a complaint filed here in our office in which your name and telephone number, along with your social security number - last 4 ending in XXXX, has been referenced in a fraudulent matter that is currently being investigated at this time. Before this investigation leads to its finalization stages and is forwarded over to your residing County of Wayne County Solicitor's Office for final review."

In the third phone message, the Defendant stated, "Your case is pending here in the office of DTA. A settlement has been approved to close your file. Please press 1 to speak with a settlement agent in charge of your case."

Dorsey Thornton & Associates LLC, failed to answer, appear or otherwise defend. On March 6, 2012, Plaintiff applied for entry of Default against Dorsey Thornton & Associates LLC and shortly thereafter, the Clerk of the Court entered its default under Rule 55(a).

Plaintiff has set forth claims for actual and statutory damages for violations of the FDCPA. Plaintiff seeks a judgment in the amount of \$11,000.00. This is based on \$1,000.00 in statutory damages and \$10,000.00 in actual damages based on the trauma Ms. Stair experienced believing she would be arrested.

There is an abundance of authority for the proposition that a Plaintiff may recover for non-economic damages in consumer credit cases under the FDCPA and the FCRA. See *Adams v Phillips*, 2002 U.S. Dist. LEXIS 24888 (E.D. LA 2002). [\$225K actual damages and \$275K punitive damages based upon general and economic damage theories.] *Ariguzo v. Kmart Corp.*, 1999 Ohio App. LEXIS 4635 (1999). [\$350K punitive, \$58K compensatory for intentional infliction of emotional distress. Consumer attempting to exchange goods at a store was accused of theft. She

provided a receipt but the store reps forced her into a room and searched her belongings. Sent a collection report to an agency who then contacted her. No economic damages awarded.] *Boris v. Choicepoint*, 249 F. Supp. 2d 851, 860-61 (WD Ky 2003) [\$100K in actual damages based on humiliation, mental distress and embarrassment held appropriate; \$250K in punitive damages award was appropriate under FCRA.] *Brown v. Experian*, (D. Conn. April 16, 2004) [\$50K jury verdict for emotional distress damages and lost credit.] *Collins v. Retail Credit Co.*, 410 F.Supp. 924 (E.D. Mich. 1976) [\$21,750 for loss of reputation, embarrassment, \$50K punitive damages.] *Conseco Finance Servicing Corp. v. Carlson*, District Court, Creek County, Sapulpa Division, State of Oklahoma, No. CJ-00-227, Feb. 14, 2002 - \$1.35M [\$450K actual damages for emotional distress and \$900K punitive damages.] *Eastham v. Nationwide Mut Ins. Co.*, 66 Ohio App 3d 843 (Ohio App1 1990) [Expert testimony not required as it "is a matter of common knowledge that continued harassment regarding unpaid medical bills may make an individual nervous and may aggravate a pre-existing heart condition. Testimony regarding humiliation, embarrassment, nervousness, and loss of self-worth while being harassed by collectors about bills that they were unable to pay. Based on this evidence, Jury awarded \$425K compensatory damages. Motion for new trial denied.] *Fausto v Credigy*, 598 F. Supp. 2d 1049 - [\$500K – \$50K compensatory for each plaintiff and \$400,000 punitive damages. Testimony that plaintiff became "tense," "desperate," and "stressed to the extreme," as a result of Defendants' pursuit of the disputed debt.] *Greenpoint Credit Corp v. Perez*, 2002 Tex. App. LEXIS 263 (Tex. App (2002) [\$5M in compensation for abusive collection practices towards an elderly plaintiff who suffered fear, embarrassment, very painful skin eruptions, heart palpitations, elevated blood pressure; \$2M for future suffering.] *Guimond v. Trans Union*, 45 F.3d 1329 (9th Cir. 1995) [Jury awarded \$275K for humiliation and mental distress.] *Johnson v. MBNA*, 357 F.3d 426

(D. Va. 2002) [Jury award of \$90,300 for emotional distress and damage to reputation sustained.] *Jones v. Credit Bureau of Huntington, Inc.*, 399 S.E.2d 694 (W. Va. 1990) [\$4K even where erroneous credit report was corrected one week after publication; verdict was sustainable as humiliation, emotional distress, or injury to reputation or credit rating. \$42,500 punitive upheld] *Pinner v Schmidt*, 617 F. Supp. 342 (E.D. La. 1985), 805 F.2d 1258 (5th Cir.1991) [\$100K actual and \$100K punitive; remitted to \$25,000 actual] [*Soghomonian v. Trans Union*, (N.D Ca 2004) [\$330K actual damages and \$660K] [*Stevenson v. TRW*, 987 F.2d 288 (5th Cir. 1993) [\$30,000 mental anguish and embarrassment]

The pleadings are sufficient to allow this Court to enter a Judgment in the amount of \$11,000.00. The Defendant, Dorsey Thornton & Associates LLC, was served and its resident agent has acknowledged service and this Defendant has decided to ignore the lawsuit.

ACCORDINGLY, Plaintiff requests that the Court enter Default Judgment (attached) against Dorsey Thornton & Associates LLC, in the amount of \$11,000.00.

Respectfully Submitted,

ADAM G. TAUB & ASSOCIATES
CONSUMER LAW GROUP, PLC

By: s/ Adam G. Taub
Adam G. Taub (P48703)
Attorney for Sherry Stair
17200 West 10 Mile Rd. Suite 200
Southfield, MI 48075
Phone: (248) 746-3790
Email: adamgtaub@clgplc.net

Dated: March 7, 2012

Certificate of Service

I hereby certify that on March 7, 2012, I electronically filed the foregoing paper with the Clerk of the Court and served this document on the following parties:

<u>Party</u>	<u>Manner Served</u>
Dorsey Thornton & Associates LLC 3988 Flowers Rd Ste #610, Doraville, GA 30360	Certified and regular mail

Respectfully Submitted,

ADAM G. TAUB & ASSOCIATES
CONSUMER LAW GROUP, PLC

By: s/ Adam G. Taub
Adam G. Taub (P48703)
Attorney for Sherry Stair
17200 West 10 Mile Rd. Suite 200
Southfield, MI 48075
Phone: (248) 746-3790
Email: adamgtaub@clgplc.net

Dated: March 7, 2012